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July 24, 1996

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**EX PARTE**

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, DC 20554

Re: Southwestern Bell Telephone Company's CEI Plan for Security Service (CC Docket Nos. 85-229, 90-623, 95-20)

Dear Mr. Caton:

On July 3, 1996, a letter in the above-referenced matter was submitted to the Commission by SBC Communications Inc.<sup>1</sup> This letter is written on behalf of the Alarm Industry Communications Committee ("AICC") and is intended to correct certain errors and omissions contained in SBC's July 3 letter.

SBC's July 3 letter attempts to demonstrate that the CEI Plan submitted by Southwestern Bell Telephone Company ("SWBT") for the provision of alarm services is consistent with Section 275 of the Telecommunications Act of 1996 (the "'96 Act"). In this effort, the July 3 letter attempts to portray SWBT's permissible provision of alarm-related customer premises equipment as separate and independent from the provision of prohibited

<sup>1</sup> Letter from Todd F. Silbergeld, Director-Federal Regulatory, SBC Communications Inc. to William F. Caton, Acting Secretary, Federal Communications, dated July 3, 1996 (the "July 3 letter").

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alarm monitoring services. However, the July 3 letter fails to refute several key points previously made by AICC in its Comments on the CEI Plan.<sup>2</sup>

The July 3 letter reaffirms the fact that SWBT will be the primary point of contact with consumers, who thus will perceive SWBT as their alarm monitoring provider. For example, the only customer contact during the sales process will be an SWBT representative. The SWBT salesperson will describe both the CPE and the alarm monitoring service. Moreover, the alarm monitoring service offered as part of the package will be one selected by SWBT. And, since SWBT intends to "ensure that the [alarm monitoring] contract contains suitable performance and other warranties" to ensure that the service meets "the standard for quality and reliability that SWBT's customers expect" (July 3 letter at 3-4), it appears that SWBT intends for its sales employees to assure prospective customers that the quality and reliability of the alarm monitoring service is guaranteed by SWBT. Thus, while customers choosing the package including both CPE and alarm monitoring service<sup>3</sup> will be asked to sign a separate contract for the alarm monitoring function, the alarm monitoring service company will have no customer contact and no participation in the sales process. Consumers will rely on SWBT for assurances that they are subscribing to a reliable alarm monitoring service.

The July 3 letter seeks to justify SWBT's role in the sale of alarm monitoring services by relying on the Commission's previous *Sales Agency Orders*.<sup>4</sup> As the AICC has previously pointed out, however, those decisions are not relevant to the circumstances presented here. First, the *Sales Agency Orders* did not involve RBOC sales activity for a service they were prohibited by law from providing. To AICC's knowledge, the Commission has never permitted an entity that was prohibited from engaging in an activity to participate indirectly in that activity by acting as a sales agent. Second, the level of involvement contemplated by those *Orders* was substantially less than here, as described

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<sup>2</sup> Comments of the Alarm Industry Communications Committee, CC Docket Nos. 85-229, 90-623, 95-20, filed May 24, 1996.

<sup>3</sup> The July 3 letter indicates that customers will be able to choose procurement of CPE from SWBT and alarm monitoring from another company, or the package of both services from the SWBT representative. While this may be true in theory, it is likely that the two options will be priced to ensure that the vast majority of customers choose the bundled option. For example, the purchase of CPE standing alone likely will require a substantial lump sum payment, or monthly payments which, when added to the monthly cost of alarm monitoring, far exceed the monthly payments required for the bundled package. SWBT has chosen not to address its pricing in its CEI Plan.

<sup>4</sup> See, *Sales Agency Orders*, 98 F.C.C. 2d 943 (1984).

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further below. Third, the *Sales Agency Orders* were not interpreting Section 275 of the '96 Act. These differences, individually and collectively, make the *Sales Agency Orders* irrelevant to the alarm monitoring proposal advanced by SWBT.

The July 3 letter also fails to address the substantial amount of ongoing involvement in the alarm monitoring service contemplated by SWBT even after the sales process is completed. For example, all billing for alarm monitoring services will be performed by SWBT. Importantly, the invoice will combine alarm CPE installments and alarm monitoring payments into a single amount billed by SWBT along with the customer's SWBT local telephone service. (CEI Plan at 3.) Contrary to the statement of the July 3 letter (and SWBT's Reply), this is not the manner in which SWBT bills for interexchange carriers today. In the case of long distance services, SWBT bills for interexchange carrier charges on a separate bill page, separately identified as a service of the IXC; IXC charges are never combined with SWBT charges, nor billed under a heading that suggests SWBT is in any way involved in providing the service.<sup>5</sup>

Beyond sales and billing, SWBT also will be the primary customer contact for inquiries. Any customer question or complaint regarding equipment or billing will be directed to SWBT. Thus, consumers will have no direct contact with the alarm monitoring provider except in emergencies or if they ever have a question about the monitoring itself. The sales process, the billing function, and most customer inquiries all will be handled by SWBT.

Further, the July 3 letter fails to acknowledge the financial relationship between SWBT and the alarm monitoring company. In fact, SWBT will receive a portion of the alarm monitoring service revenues. SWBT attempts to characterize this payment as a routine sales commission, suggesting euphemistically that there is significance in the difference between a commission paid from the monitoring revenues and sharing in those revenues.<sup>6</sup> However, SWBT fails to address the incentives which this arrangement creates. The identification of SWBT as the alarm services provider in the eyes of the consumer, combined with the fact that in this resale arrangement SWBT profits in the same manner that it would if it were performing the alarm monitoring function directly, gives SWBT all the

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<sup>5</sup> Although SWBT indicated in its Reply that it would state on its bills that services were provided by the monitoring entity, it did not commit to separate the charges for each service, nor did it formally amend its CEI Plan.

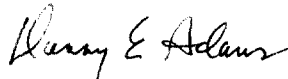
<sup>6</sup> SWBT also did not reveal the level of its "commission" payments as a percentage of the total alarm monitoring revenues. Payment levels in excess of those traditionally paid in the alarm industry would evidence more than a mere sales agent relationship.

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same incentives to discriminate, cross-subsidize and act anticompetitively as it would have if Section 275(a)(1) did not exist.

In short, the CEI Plan and the July 3 letter seek to create a series of alleged loopholes in Section 275(a) which, taken together, would narrow the law to nothing more than a minor inconvenience to SWBT. In the process of staring at the trees and not the forest, however, SWBT has completely ignored the common sense reading of the statute. The clear purpose of Section 275(a)(1) is to prevent anticompetitive activity by RBOCs in the alarm monitoring business through enactment of a five year prohibition on entry. The Congress determined that only a complete bar for that period would be sufficient to prevent RBOC anticompetitive conduct. Because separation requirements and other safeguards were deemed inadequate, none were adopted. Instead, the RBOCs were restricted to sales, installation and maintenance of alarm CPE until local competition evolves to give alarm monitoring competitors an alternative local loop option; the Congress deemed 5 years to be sufficient for that purpose. This Congressional judgment will be completely eviscerated if the RBOCs are permitted to follow SWBT's plan.

Sincerely.



Danny E. Adams  
Counsel for Alarm Industry  
Communications Committee